

Internal Revenue Service

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Washington, DC 20224

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Date:

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Dear :

This responds to the request dated October 29, 2008, submitted by your authorized representative on behalf of Fund. Fund requests that the Internal Revenue Service rule: 1) that income and gain arising from the commodities-linked notes described in this letter will constitute qualifying income to Fund under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code); and 2) that income earned from the ownership of a wholly-owned subsidiary that is a controlled foreign corporation (CFC) constitutes qualifying income to Fund under section 851(b)(2).

FACTS

Fund is organized as a series fund of Trust, a State business trust. Trust is registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act) as an open-end management investment company. Fund elects to be treated as a “regulated investment company” (RIC) under subchapter M of the Code.

Commodities-linked Notes

Fund invested or intends to invest in commodities-linked notes having the terms and conditions of the following notes (the Notes): The first note (“Note 1”) has a par value of \$p. Its payout formula is determined with reference to the Index. Its term is one year and one month. Note 1 pays a coupon of q% quarterly and on the maturity date. Fund, as holder of Note 1, has the right to put Note 1 to the issuer at the calculated redemption price at any time prior to maturity based on the closing Index level on the date of notification if notification is received by a specified time on a business day, otherwise the next business day. The issuer of Note 1 has the right to redeem Note 1 (in whole but not in part) if (i) the Index is no longer published, or ii) the intraday level of the Index during any business day is equal to or less than r% of the initial Index level and issuer gives notice on that business day by a specified time. In addition, if the closing Index level on any business day is equal to or less than r% of the initial Index level, Note 1 will “knockout” and automatically redeem based on the closing Index level of the next business day.

The repayment obligation upon early redemption, knockout, or at maturity equals the face amount of Note 1 plus or minus the following adjustment. To calculate the adjustment, the face amount of Note 1 is multiplied by (A) a leverage factor of s, and by (B) the product of (i) the percentage of the increase or decrease of the final Index level compared to the initial Index level for the applicable period and (ii) a discount factor,

less (iii) an adjustment factor representing an annual fee. The total is then adjusted to account for any accrued coupon payments.

Only upon early redemption or knockout, the discount factor is applied to adjust the Index related return to its present value based on the number days remaining to the scheduled maturity for Note 1. The discount factor mitigates the effect of a positive or negative percentage change in the Index on the redemption amount. The discount factor varies with the number of days remaining to maturity, and thus has a smaller effect on the redemption amount as Note 1 approaches its maturity. The adjustment factor, which represents a fee based on the number days Fund holds Note 1, is equal to $\frac{t}{365}$ multiplied by the percentage of days that Note 1 is outstanding throughout the year.

The second note ("Note 2") has a par value a par value of \$ \underline{p} . Its payout formula is determined with reference to the Index. Its term is one year and one month. Note 2 pays a coupon of $\underline{q}\%$ monthly and on the maturity date. Fund, as holder of Note 2, has the right to put Note 2 to the issuer at the calculated redemption price at any time prior to maturity based on the closing Index level on the date of notification if notification is received by a specified time on a business day, otherwise the next business day. The issuer of Note 2 has the right to redeem Note 2 (in whole but not in part) if (i) the Index is no longer published, or ii) the intraday level of the Index during any business day is equal to or less than $\underline{u}\%$ of the initial Index level and issuer gives notice on that business day by a specified time. In addition, if the Index closing level on any business day is equal to or less than $\underline{u}\%$ of the initial Index level, Note 2 will "knockout" and automatically redeem based on the closing Index level of the next business day.

The repayment obligation upon early redemption, knockout, or at maturity equals the face amount of Note 2 plus or minus the following adjustment. To calculate the adjustment, the face amount of Note 2 is multiplied by (A) a leverage factor of \underline{s} , and by (B) the product of (i) the percentage of the increase or decrease of the final Index level compared to the initial Index level for the applicable period and (ii) a discount factor, less (iii) an adjustment factor representing an annual fee. The total is then adjusted to account for any accrued coupon payments.

Only upon early redemption or knockout, the discount factor is applied to adjust the Index related return to its present value based on the number days remaining to the scheduled maturity for Note 2. The discount factor mitigates the effect of a positive or negative percentage change in the Index on the redemption amount. The discount factor varies with the number of days remaining to maturity, and thus has a smaller effect on the redemption amount as Note 2 approaches its maturity. The adjustment factor, which represents a fee based on the number days Fund holds Note 2, is equal to \underline{v} times the notional amount if Note 2 is mandatorily redeemed within \underline{w} days of the initial trade date and then adjusted to reflect the percentage of days Note 2 is outstanding throughout the year. If Note 2 remains outstanding for at least \underline{y} days, the adjustment factor will be equal to \underline{z} times the notional amount and then adjusted to reflect the percentage of days Note 2 is outstanding throughout the year.

Fund makes the following representations with respect to these two Notes:

(1) The issuer of the Notes will receive payment in full of the purchase price of the Notes substantially contemporaneously with the delivery of the Notes;

(2) Fund while holding the Notes will not be required to make any payment to the issuer of the Notes in addition to the purchase price paid for the Notes, whether as margin, settlement payment, or otherwise, during the life of the Notes or at maturity;

(3) The issuer of the Notes is not subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (CEA); and

(4) The Notes are not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Controlled Foreign Corporation

Fund intends to form a wholly-owned subsidiary (Subsidiary) incorporated as a Type A Company under the laws of Country. Under the laws of Country, a Type A Company provides limited liability for all holders of shares. A shareholder's liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary will file an election on Form 8832 to be taxed as a corporation for federal income tax purposes.

Fund represents that, although Subsidiary will not be registered as an investment company under the 1940 Act, Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to investments that would apply if the Subsidiary were registered under the 1940 Act.

Fund will invest a portion of its assets in Subsidiary, subject to the limitations set forth in section 851(b)(3) of the Code. Subsidiary will invest in one or more of the following types of instruments: commodity and financial futures and options contracts (and fixed income securities that serve as collateral for such contracts); deliverable forward and cash settled non-deliverable forward contracts. Each of these contracts may be linked to the performance of one or multiple commodities (including a commodity index). Subsidiary may also invest in swaps on commodities or commodities indexes or in commodity-linked structured notes. Furthermore, Subsidiary may invest directly in commodities.

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the “qualifying income requirement”). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC’s] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as—

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total voting power of a foreign corporation. Fund represents that it will own 100 percent of the voting power of the stock of Subsidiary. Fund is a United States person. Fund therefore represents that Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1)(A) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities.

Subsidiary's investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Fund therefore represents that it will include in income the sum of the pro rata share of Subsidiary's subpart F income for the taxable year in accordance with section 951.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Notes constitutes qualifying income to Fund under section 851(b)(2) of the Code. We further rule that subpart F income of the Subsidiary attributable to the Fund is income derived with respect to Fund's business of investing in the stock of Subsidiary and thus constitutes qualifying income under section 851(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Funds qualify as RICs under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)